

APPEAL NO. 023039
FILED JANUARY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 31, 2002. The hearing officer determined that (1) the compensable injury of _____, does not include an injury to the low back; (2) the appellant (claimant) is not entitled to third, fourth, and fifth quarter supplemental income benefits (SIBs); and (3) the claimant has permanently lost entitlement to SIBs. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

EXTENT OF INJURY

The hearing officer did not err in determining that the compensable injury of _____, does not include an injury to the low back. The determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

THIRD QUARTER SIBS

The hearing officer erred in determining that the claimant is not entitled to third quarter SIBs. Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) govern entitlement to SIBs. The hearing officer determined that the claimant was not enrolled in, and satisfactorily participating in, a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the third quarter qualifying period. The qualifying period was from May 16, through August 14, 2001. The claimant introduced an Individualized Plan for Employment, developed during the qualifying period, which included an employment goal, intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the claimant's responsibilities for the successful completion of the plan. Under the plan, the claimant would receive training to become a barber. In fulfillment of this goal, the TRC instructed the claimant to investigate and select a barber school within the surrounding area. In a letter dated June 6, 2001, the TRC indicated that the claimant did this, in part during the qualifying

period, and “was making a good faith effort toward following [TRC’s] directive and was cooperating.” The claimant began classes on September 17, 2001, after the close of the qualifying period. In our view, the evidence clearly establishes that the claimant was enrolled in a full-time vocational rehabilitation program sponsored by the TRC and satisfactorily participated in such program during the third quarter qualifying period. *Compare* Texas Workers’ Compensation Commission Appeal No. 010483-s, decided February 6, 2002. The hearing officer’s determination to the contrary is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra*. Accordingly, we reverse the hearing officer’s determination and render a decision that the claimant is entitled to third quarter SIBs.

FOURTH AND FIFTH QUARTER SIBS

The hearing officer did not err in determining that the claimant is not entitled to fourth and fifth quarter SIBs. At issue was whether the claimant “satisfactorily participated” in a TRC vocational rehabilitation program during the fourth and fifth quarter qualifying periods and, in the alternative, whether the claimant made a good faith job search during the qualifying period for the fifth quarter. These were questions of fact for the hearing officer to resolve. It was undisputed that the claimant dropped out of the TRC program during the fourth quarter qualifying period and did not return to the program during the qualifying period for the fifth quarter. Additionally, the evidence shows that the claimant did not search for employment each week of the qualifying period for the fifth quarter. In view of this evidence and the applicable law, we cannot conclude that the hearing officer’s determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain, supra*.

LOSS OF ENTITLEMENT TO SIBs

The hearing officer erred in determining that the claimant permanently lost entitlement to SIBs. Section 408.146 provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. The hearing officer’s determination that the claimant permanently lost entitlement to SIBs is premised upon the determination of nonentitlement to third, fourth, and fifth quarter SIBs, as well as evidence that the claimant was previously determined not entitled to second quarter SIBs. Given our reversal of the determination with regard to third quarter SIBs, we likewise reverse the hearing officer’s determination on this issue and render a decision that the claimant did not permanently lose entitlement to SIBs.

Accordingly and for the above stated reasons, the decision and order of the hearing officer are affirmed in part and reversed and rendered in part.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

JC
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Edward Vilano
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Terri Kay Oliver
Appeals Judge